IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1278 OF 2006

Shri Vedprakash Surajbhan
Goel (Agarwal) .....Petitioner.

V/s

Mr. Raj Nandkishor Agarwal
and Ors. ..... Respondents.

Mr. G.R. Agrawal for the Petitioner.

Mr. S.S. Shah for Respondent No.1.

Mr. Y.S. Shinde, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 10th August, 2007

P.C.:

1. Heard the learned Counsel appearing on behalf of the Petitioner, the learned Counsel appearing on behalf of Respondent No.1 and the learned APP for the State.

2. Petitioner is challenging the order of issuance of process by the Trial Court for an offence punishable under section 420 read with section 120-B of the Indian Penal Code. Petitioner has challenged this order by filing revision

application in the Sessions Court. The Sessions Court, however, rejected his application. Being aggrieved by the aforesaid orders, the Petitioner has filed this Petition under Article 227 of the Constitution of India.

3. It is submitted by Mr. Agrawal, the learned Counsel for the Petitioner that the Petitioner was only a consenting party to the agreement which was executed by his father with Respondent No.1 herein. It is submitted that no overt-act is alleged against the Petitioner in the complaint. It is further submitted that the document which was allegedly fabricated and forged was not at the instance of the Petitioner but at the instance of his father and, therefore, the process should not have been issued against the Petitioner. He further submitted that the police had submitted a report, exonerating the present Petitioner. He further submitted that, in any case, in view of the specific bar under section 195 of the Cr.P.C., Court would not have taken cognizance of the said offence.

4. Mr. Shah, the learned Counsel appearing on behalf of

Respondent No.1, on the other hand, invited my attention to para 10 of the complaint. He has submitted that a specific averment was made against the accused regarding the statement being made by the accused before the ULC Authorities and in view of the said statement, wrongful loss was caused to the Petitioner and wrongful gain was caused to all the accused. He submitted that bar under section 195 of the Cr.P.C. would not be applicable in the present case since the document was forged prior to the filing of the complaint.

5. The submission made by Mr. Agrawal, the learned Counsel appearing on behalf of the Petitioner cannot be accepted. The complaint was filed under section 420 read with section 120B of the Indian Penal Code. Specific averments have been made in the complaint regarding the role played by all the accused. At this stage, therefore, it is not possible to weigh and sift the material which is on record for the purpose of arriving at the conclusion that the Petitioner herein is not involved in the said offence. It is always open for the Petitioner to apply for discharge at the

appropriate stage. The bar under section 195 of the Cr.P.C. also would not apply since what has been alleged in the complaint is that the letter of the PMC was fabricated by the accused in collusion with each other before the complaint was filed. As such, bar under section 195 would not apply. What section 195 contemplates is that if documents are fabricated during the course of any proceedings in any court or false evidence is given during these proceedings, the Court itself would be competent to file a complaint. However, in other cases, party, who is affected as a result of fabrication of document, is always competent to file a complaint alleging commission of substantive offence.

6. In the result, Writ Petition is dismissed. Trial Court is directed to decide the case as expeditiously as possible.

7. Mr. Agrawal, the learned Counsel appearing for the Petitioner submits that the Petitioner has been admitted in the hospital and is taking treatment and is on dialysis. He submitted that exemption may be granted to the Petitioner from appearing in the Court. In the facts and circumstances

of the case, Trial Court is directed to exempt the petitioner from appearing in Court except for the purpose of recording his plea and taking his statement under section 313 of the Cr.P.C. If an application is made for exemption, the same will be considered favourably by the Trial Court.

(V.M. KANADE, J.)